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**5. Same—Evidence—Sufficiency.**—Evidence in a suit for the specific performance of a contract for the sale of real estate held not to establish the terms of the contract with clearness essential to the relief demanded.

[Ed. Note.—For cases in point, see Cent. Dig. vol. 44, Specific Performance, §§ 387-395.]

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COLONNA DRY DOCK CO. *v.* COLONNA.

June 11, 1908.

[61 S. E. 770.]

**1. Appeal and Error—Harmless Error—Errors Not Affecting Result—Refusal of Rehearing—Cumulative Evidence.**—The refusal of the circuit court to grant a rehearing for the submission of cumulative evidence, which could not change the result, is not ground for reversal.

[Ed. Note.—For cases in point, see Cent. Dig. vol. 3, Appeal and Error, § 4033.]

**2. Specific Performance—Discretion of Court.**—An application to the court to compel specific performance is addressed to its sound judicial discretion, regulated by established principles.

[Ed. Note.—For cases in point, see Cent. Dig. vol. 44, Specific Performance, §§ 17-18.]

**3. Same—Contracts Enforceable.**—Before equity will specifically enforce a contract, the contract must be distinctly proved, clearly and distinctly ascertained, and must be reasonable, certain, legal, and mutual, founded on at least a meritorious consideration, and the party seeking specific performance must not have been backward, but ready, desirous, prompt, and eager.

**4. Same.**—Where the court is unable from all the circumstances to say whether the minds of the parties met on all the essential particulars of the contract, or, if they did, cannot say on what substantial terms they agreed, specific performance will be refused.

[Ed. Note.—For cases in point, see Cent. Dig. vol. 44, Specific Performance, §§ 86-99.]

**5. Same—Evidence.**—Evidence held not to establish a contract for the sale of real estate with the degree of certainty required to enable the court to decree its specific performance.

**6. Equity—Jurisdiction—Ancillary Jurisdiction—Award of Damages.**—Equity cannot undertake to give damages, save ancillary or auxiliary to some one of the recognized subjects of jurisdiction, and then only such damages are awarded as may be necessary to do full justice by way of compensation.

**7. Damages—Breach of Agreement to Pay Money—Measure of Recovery.**—Damages for breach of an agreement to pay money are capable of exact measurement in contemplation of law, and the

measure of damages is as a general rule the principal sum, with legal interest thereon from the time the payment was due.

[Ed. Note.—For cases in point, see Cent. Dig. vol. 15, Damages, § 339.]

**8. Same—Liquidated Damages or Penalty.**—A purchaser in an option contract for the purchase of real estate agreed to form a company which should unite the vendor's property and the property of a third person in its holdings, agreed to pay the consideration named partly in cash and partly in the stock of the company issued on the basis of its combined holdings, and the balance secured by bond of the company and a first deed of trust on the property conveyed by the vendor. The purchaser deposited in a bank a specified sum under an agreement which stipulated that he should have an additional fixed period within which to comply with the contract, and that, if he failed to do so, such sum should be taken by the vendor "as liquidated damages." Held, that since the agreements by the purchaser were independent, and since for a breach of the agreement to make the cash payment there was an exact standard for measuring damages, the specified sum deposited was a penalty, and not liquidated damages.

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BELLENOT *v.* CITY OF RICHMOND.

June 11, 1908.

[61 S. E. 785.]

**1. Dedication—Defined.**—Dedication is an appropriation of land by its owner to the public use.

[Ed. Note.—For cases in point, see Cent. Dig. vol. 15, Dedication, §§ 1-11.

For other definitions, see Words and Phrases, vol. 2, pp. 1908-1917; vol. 8, pp. 7629-7630.]

**2. Same—Manner and Form.**—A dedication need not be in writing, but may be made in any manner which clearly manifests the intention of the owner, and a dedication, when made and accepted, is irrevocable.

**3. Same.**—A deed defined the boundary of the premises, in part, as "thence 300 feet to the south side of the Turnpike road, thence up the south side of the Turnpike road." By subsequent deeds the south side of the Turnpike road, thereafter called Broad street, was in somewhat varying terms recognized as the northern boundary, and by deed to defendant's grantor the northern boundary was defined as running westwardly along the southern side of Broad street, fronting thereon 31 feet, which description was followed in the deed to defendant. It appeared that Broad street, where the premises abutted on it and for some distance to the east and west, had a width of 118 feet, had been used as a public highway for al-